For these reasons I am of opinion that the divorce was valid and the conviction must therefore be affirmed.

The offence is serious in itself and is specially likely to lead to breaches of the peace; imprisonment is therefore appropriate and would ordinarily be for a substantial term but in the special circumstances of this case the sentence imposed by the learned Magistrate was a proper one.

Appeal dismissed.

Re LEE CHAI KEE & CO.

[Orig. Civ. Juris. (Wilson, J.) March 21, 1952]

[Malacca — Bankruptcy No. 32 of 1950]

Bankruptcy — Deposit made under Remittance Shops Transactions (Stamp Duty) Regulations, 1948 — Claims of depositors.

Under the Remittance Shops Transactions (Stamp Duty) Regulations, 1948 a remittance shop paid in two sums as the deposit required under the law. A receiving order having been made against the firm an adjudication order was obtained against the sole proprietor.

Held, that the amount deposited as security must be paid to the Official Assignee and the claims of depositors of remittances through the firm whose commitments had not been discharged must be lodged with him.

BANKRUPTCY.

J. B. Prentis, Official Assignee in person.

P. G. Clough (Federal Counsel) for the Controller of Foreign Exchange and Accountant General, F.M.

The arguments appear sufficiently from the judgment.

Cur. Adv. Vult.

Wilson, J. : — The facts of this case are fully set out in the report of the Official Assignee dated 18th February, 1952. It is sufficient to say that on the 26th January, 1951, a Receiving Order was made against Lee Chai Kee & Company of 127, Sultan Street, Kuala Lumpur and that on the 24th August, 1951, an Adjudication Order was made against Lee Chai Kee, proprietor of the said company. Previous to the Receiving Order Lee Chai Kee have obtained a Remittance Shops permit under the Remittance Shops Transactions (Stamp Duty) Regulations, 1948. The footnote to the form of application contained in the Second Schedule to these Regulations is as follows :—

"Security of $10,000 in respect of an 'A' permit, or $2,000 in respect of a 'B' permit is required and may be applied to meet such of your commitments to your depositors as you may fail to discharge."

Lee Chai Kee made two deposits of $10,000 and $2,000, respectively, with the Bank of China, Kuala Lumpur, on the 13th June, 1950 in the joint names of himself and the Accountant-General, Federation of Malaya. At the time of the Receiving Order these two deposits remained intact in the Bank of China and had not been applied to meet any commitments to any of Lee Chai Kee's depositors.

It would appear to me that the Accountant-General would not have had any authority to decide whether Lee Chai Kee had failed to discharge any commitment to a depositor and that unless Lee Chai Kee admitted any such failure, the depositor would have had to have taken legal action against Lee Chai Kee and, if successful, apply for an attachment of the deposit. An Adjudication Order having been made against Lee Chai Kee, it appears to me that the remedy of his depositors whose commitments he may have failed to discharge must now be to make a claim in bankruptcy.

In these circumstances I answer the first question which has been submitted to the Court on this notice of motion as follows :—

The two sums of $10,000 and $2,000 deposited in the Bank of China, Kuala Lumpur, by two deposit receipts both dated 30th June, 1950 in the joint names of the bankrupt and the Accountant-General, Federation of Malaya, vest in the Official Assignee for the benefit of the general body of creditors.

I do not propose at this stage to answer the second question submitted to the Court as to whether the bankrupt's depositors are secured creditors or are ordinary creditors in the bankruptcy. If any such depositor wishes to maintain that he is a secured creditor, it is open for him to do so in the bankruptcy. I do not think it would be right for me to express an opinion on this point at this stage which might be adverse to the depositors when none of them is a party to these proceedings.

Order accordingly.

KARTAR SINGH & ANOR. v. REX.

[C. Cr. A. (Murray-Aynsley, C.J. (Singapore), Mathew, C.J. (F.M.) and Knight, J.) March 28, 1952]

[Singapore — Criminal Appeal No. 21 of 1951]

Penal Code, s. 299 — Distinction between effect of direct and circumstantial evidence.

Where there is a direct evidence, however slight, the Jury are entitled to accept it and the case should be left

to them to decide. In the case of circumstantial evidence the position is different. Here the evidence must be such that, if it is believed, there is no reasonable alternative to the guilt of the accused. If it is anything less than this it is no case at all.

COURT OF CRIMINAL APPEAL.

H. A. Francis for the appellants.

L. Rayner for the Crown.

The facts appear sufficiently from the judgment of the Court of Criminal Appeal delivered by:—

Murray-Aynsley, J.: — In this case the two appellants were convicted under section 299 of the Penal Code.

The facts were rather unusual. The two appellants seem to have shared a room in an attap house in Aljunied Road. It appears that at about 7 one morning one Velu Dial or Dial Singh told one Tara Singh that he was going to collect the sum of $16 owed by the second appellant. At 7.30 he was seen near the room occupied by the appellants. At some time between 8.30 and 9 this man borrowed a bicycle from one Low Seng Chai who lived in McPherson Road. At about 9 o'clock one Channan Singh visited the appellants in their room. At about 9.30 Dial Singh arrived. At 12 noon all went to a toddy shop where they drank $16 worth and all got somewhat drunk but were still able to walk.

According to his story, Channan Singh parted from the appellants and met them later in the day. About 2.30 p.m. Velu Dial was found injured in the room of the appellants. The first appellant was present and said that Velu Dial had sustained the injuries in a fall which was obviously untrue. The second appellant was not present but when he was arrested at about 9.25 p.m. blood which was not his own but was of the same group as of Velu Dial was found on his clothing. There were signs of a struggle in the room. Later Velu Dial died from the injury received. The post mortem showed that death was due to a fracture of the skull caused by a blow from a blunt instrument. There was no certainty that more than one blow was struck.

Later in the afternoon one Kehr Singh met the two appellants together with Channan Singh at a cinema. According to Kehr Singh, Channan Singh said that they were going to fight the next day. The second appellant then said "never mind, if we fight to-morrow we will make it up". According to Channan Singh the first appellant had spoken of a quarrel with the deceased. Channan Singh had disappeared before the trial but his deposition was read.

The evidence showed that one of the two appellants might have struck the fatal blow. In the absence of the other there would have been a reasonable circumstantial case against the other. But the fact that there is evidence against both destroys the case against either of them. We have no means of knowing who actually struck the blow. Therefore neither can be convicted without evidence of common intention. Of this there is none. There is nothing in the evidence to suggest that death resulted from anything but a sudden quarrel between men who had been drinking heavily.

The case against the appellants was put carefully and accurately to the jury. We consider, however, that this is one of those cases in which the evidence, even if believed, did not constitute proof of the guilt of either of the appellants. Here it is necessary to distinguish between the effect of direct and of circumstantial evidence. Where there is direct evidence, however, slight, the jury are entitled to accept it and the case should be left to them to decide. In the case of circumstantial evidence the position is different. Here the evidence must be such that, if it is believed, there is no reasonable alternative to the guilt of the accused. If it is anything less than this it is no case at all.

The appeals were allowed and the convictions quashed.

Appeals allowed.

PUBLIC PROSECUTOR v. LEE LAM (f).

[App. Crim. Juris. (Wilson, J.) March 28, 1952]

[Selangor — Criminal Appeal No. 10 of 1952]

Emergency (Rubber Control) Regulations, 1949, Regulations 4 and 5 — Unlawful possession of rubber — Criminal Procedure Code, s. 173A.

The accused pleaded guilty to a charge of being in unlawful possession of 4 katties of scrap rubber. The Magistrate did not record a conviction but bound her over under section 173A of the Criminal Procedure Code. His reasons for so doing were:— (1) she had no previous conviction; (2) she was about 50 years old and had six small children (all in Court) to look after; (3) in addition her husband was an opium addict, sickly and was dependent on her; (4) there had been an absence of similar cases in the district for some time.

Held, the Magistrate had no authority to act under section 173A of the Criminal Procedure Code and should have imposed the minimum sentence of one year's imprisonment provided by law.